Ex. C to Cramer Declaration
PUBLIC REDACTED VERSION

EXHIBIT 2

HIGHLY CONFIDENTIAL

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 1    UNITED STATES DISTRICT COURT
      FOR THE NORTHERN DISTRICT OF CALIFORNIA
 2    SAN FRANCISCO DIVISION
      Case No. 3:21-md-02981-JD
 3    ------------------------------------X
      IN RE GOOGLE PLAY STORE
 4    ANTITRUST LITIGATION
 5
      THIS DOCUMENT RELATES TO:
 6    Epic Games Inc. V. Google LLC, et al.,
      Case No: 3:20-cv-05671-JD
 7
      In re Google Play Consumer
 8    Antitrust Litigation,
      Case No: 3:20-cv-05761-JD
 9
      In re Google Play Developer
10    Antitrust Litigation,
      Case No: 3:20-cv-05792-JD
11
      State of Utah, et al., v.
12    Google LLC, et al.,
      Case No: 3:21-cv-05227-JD
13    ------------------------------------X
14
15            **HIGHLY CONFIDENTIAL -
              UNDER PROTECTIVE ORDER**
16
17                  VIDEOTAPED DEPOSITION OF
18    VITOR BACCETTI, taken at Morgan, Lewis
19    & Bockius, 101 Park Avenue, New York,
20    Tuesday, July 16, 2024 at 9:02 a.m.
21    Eastern Standard Time, before Dawn
22    Matera, a Certified Shorthand Reporter
23    and Notary Public.
24
25
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 1          THE VIDEOGRAPHER:  Good morning.
 2     We are going on the record at 9:02
 3     a.m. EDT on Tuesday, July 16th, 2024.
 4     Please note that the microphones are
 5     sensitive and may pick up whispering
 6     and private conversation.  Audio and
 7     video recording will continue to take
 8     place unless all parties agree to go
 9     off the record.
10          This is media unit one of the
11     video-recorded deposition of Vitor
12     Baccetti being taken by counsel here
13     in the matter of in Re Google Play
14     Store Antitrust Litigation filed in
15     the United States District Court for
16     the Northern District of California,
17     San Francisco division.  Location of
18     this deposition is Morgan Lewis &
19     Bockius, LLP.
20          My name is Joe Raguso.  I am
21     with Veritext.  I am the videographer.
22     The court reporter is Dawn Matera,
23     also with Veritext.
24          I am not authorized to
25     administer an oath.  I am not related
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 1       to any party in this action nor am I

 2       financially interested in the outcome.

 3            Counsel's appearances will be

 4       noted on the stenographic record and

 5       the court reporter will now swear in

 6       the witness.

 7   V I T O R   B A C C E T T I, the Witness

 8   herein, having first been duly sworn by

 9   the Notary Public, was examined and

10   testified as follows:

11   EXAMINATION BY MS. MOSKOWITZ:

12       Q.    Good morning.

13       A.    Good morning.

14       Q.    My name is Lauren Moskowitz.  I

15   represent Epic in this matter.  Can you

16   just state again your full name for the

17   record.

18       A.    Yes, Vitor Baccetti.

19       Q.    And what is your address?

20       A.    ████████████████████████

21   ████████████████████████

22       Q.    Have you ever been deposed

23   before?

24       A.    No.

25       Q.    So there are lots of rules.  I
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1   am not going to go through them. I think

2   a couple though to keep in mind is make

3   sure you answer all of my questions

4   audibly, and if you could do your best to

5   wait until I finish my question before

6   beginning your answer and I will try to

7   wait for your answer before I begin my

8   next question so that the record is

9   clear, I would appreciate it; is that

10   okay?

11   A.   Yes.

12   Q.   If at any point you don't

13   understand one of my questions, please

14   ask me to rephrase or clarify and if you

15   do not do that, I will assume you

16   understood the question; is that fair?

17   A.   Yes.

18   Q.   Is there any reason you cannot

19   testify truthfully or accurately today?

20   A.   No.

21   Q.   What did you do to prepare for

22   your deposition today?

23   A.   So beginning of June, I think

24   late May I heard that we need to prepare

25   a response to Epic's injunction, proposed

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 1   injunction, so I was approached by our
 2   counsel and at the time, with a group of
 3   different people, we established a
 4   working group.  I was a member of this
 5   working group and as part of this process
 6   I answer a number of questions.  And
 7   eventually prepared a declaration that we
 8   submitted to the Court.
 9       Q.    I am going to ask you questions
10   about all of that and leading up to your
11   declaration.  For now, sort of following
12   all of that, your declaration went in and
13   you found out you were going to be
14   deposed today.  Did you have any meetings
15   to prepare for today's testimony?
16       A.    Yes.
17       Q.    And when were those meetings?
18       A.    We had meetings to prepare for
19   this deposition I believe like last week
20   and maybe the week before.
21       Q.    How many meetings do you
22   recall?
23       A.    I recall four meetings.
24       Q.    Four.  And how long
25   approximately were each of those?
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1   the Play console and see metrics, for

2   example, which are effective metadata,

3   they are analytics about the app. So we

4   do have things like that. But I

5   personally cannot think of any example

6   here whether we would be providing to a

7   third party information about an app.

8   So right now, I cannot think of

9   anything specific that we would provide

10   as such.

11   Q.   Okay. So the next page here

12   there is, at the top Metadata Export. Do

13   you see where I am?

14   A.   I do.

15   Q.   This subsection describes

16   technically how you would go about

17   making -- doing the metadata export; is

18   that right?

19   A.   Yes, it does.

20   Q.   And so paragraph 8, the first

21   sentence there says, "Google would

22   regularly export metadata associated with

23   these apps in its catalog to a server and

24   refresh it on a daily basis."

25   Do you see that?

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```
 1       A.     I do.
 2       Q.     And given that this is your
 3  proposal, you at least, based on all of
 4  the working group discussions, think this
 5  is technically feasible to do?
 6       A.     Exporting the data to the
 7  server is technically feasible.  It's
 8  quite complex, as reflected in the
 9  estimates of time and cost.  Talking
10  specifically about feasibility in
11  isolation without other factors, yes,
12  it's feasible.
13       Q.     And Google is proposing to
14  refresh the metadata it sends on a daily
15  basis.  How did you arrive at daily?
16       A.     That's a good question.  We
17  looked -- as I was discussing with this
18  group about how we would go about
19  implementing such a mechanism, there were
20  a lot of discussions about the complexity
21  and the latency of refreshes would be a
22  key driver for how complex this
23  implementation would be.
24             Daily would be something that's
25  simpler.  However, there may be cases
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1   where another party may want something

2   faster. That's reflected on the cost

3   tables.

4   If you go to page 8 of my

5   declaration, you see something that says

6   Initial Scoping of Design. Another says

7   Implementation and Launch. And another

8   from the bottom says Mechanism For More

9   Frequent Updates.

10   The first one, Implementation

11   and Launch, assumes daily refresher which

12   is simpler.

13   To have something closer to

14   real, quote unquote realtime updates,

15   meaning having updates as they happen in

16   a matter of seconds, minutes, that's what

17   would be covered by this mechanism for

18   more frequent updates, which adds an

19   additional seven software engineers. Two

20   software engineers who were responsible

21   for productivity and testing and one

22   technical program manager.

23   Going back to your question

24   about daily basis, we did consider these

25   things and we separated given the

Page 95

1   complexity and cost of such

2   implementation.

3   Q.   And so, again, separating

4   feasibility from cost to develop, it's

5   technically feasible to do the refreshing

6   more frequently than daily, it would just

7   take more engineering work to get there?

8   A.   More engineering work, more

9   time, more complexity and all of these

10 things.

11   Q.   But technically feasible?

12   A.   Technically feasible. More

13 complex. Yes.

14   Q.   And how often is the Google

15 Play Store metadata about these apps

16 updated in the ordinary course within

17 Google Play?

18   A.   It would have been on the

19 developer. Developers may change, for

20 example, they may choose to update the

21 description of their app. They may

22 change their icon.

23   Anyway, different things they

24 can do. That depends truly on the

25 developer itself. Developers may list

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1   new things. May remove things from this

2   list. They would happen -- having a

3   daily refresh would mean this information

4   is not synched for a period of time

5   during that day.

6   So, yes, of course, if you're

7   having a daily refresh, there could be

8   like a period of time when there are some

9   inaccuracies. But we are just calling

10 out that element, since it adds

11 significant complexity to have more

12 frequent updates.

13   Q.   Let me ask a more slightly

14 different question to try to get at what

15 I am asking.

16   Let's say the developer is on

17 their console making a change to their

18 icon or something, whatever it is. They

19 click submit, something along those

20 lines; is that how that process would

21 generally look at a high level?

22   A.   Yes, generally, yeah.

23   Q.   The time between that send or

24 submit to that appearing in the Google

25 Play Store, how fast does that happen?

1   A.   It would depend sometimes on

2   the specific information. I can see in

3   some cases, if you have a new version,

4   for example, or something, it might be an

5   app review or so on, assuming there is no

6   additional review needed for that, it

7   could be faster.

8   There is no such thing as

9   instantaneous. But it could be something

10 anyway, I assume within a few minutes or

11 a few hours. I would need to get into

12 discussions with my engineering team just

13 to confirm exactly, but, yes, it would

14 happen at some point.

15   Q.   So just apples to apples, like

16 forget about app review or anything, a

17 change going live in Google Play is

18 happening in the minutes-to-hours zone

19 and it's being proposed to happen on a

20 daily refresh basis on the metadata

21 export, right?

22   MR. KRAVIS: Object to form.

23   A.   Looking at the specific table,

24 we called out these two options and we

25 actually did cost the feasibility of

Page 98

1   doing more frequent updates. So this

2   would be an implementation decision that

3   would need to be done as part of the

4   scoping and all of the discussions.

5   It's technically feasible to

6   make these things faster.

7   Q.   Understood. And just focus on

8   my question. My question was, what is

9   being proposed is daily refresh, right?

10   A.   That's the baseline, but we did

11   cost the opportunity of making it more

12   frequent than daily.

13   Q.   And is the more frequent in

14   data proposed to be the exact same amount

15   of time as it would take for it to become

16   live in Google Play?

17   A.   It would be very similar.

18   Q.   And that similar would be on

19   the order of minutes to hours, whatever

20   it takes for Google Play?

21   A.   Yes, I would say so. I would

22   need to check and discuss more, but that

23   sounds reasonable.

24   Q.   That same paragraph 8 then

25   talks about what type of metadata or

Page 99

1   categories of metadata would be part of

2   that export. Do you see that?

3   A.   Yes.

4   Q.   And there is two categories I

5   want to just sort of break them up. The

6   first category is basic data about the

7   app itself and the second category is

8   basic information provided by the

9   developer about the app, right?

10   A.   Yes.

11   Q.   So that first category, this

12   basic data pertaining to the app itself,

13   you have a parenthetical that has a list

14   of examples following the e.g., right?

15   A.   Yes.

16   Q.   And those examples are app name

17   and package name, developer name, image

18   of app icon and app category; do you see

19   that?

20   A.   I do.

21   Q.   Are those just examples or is

22   that, from your perspective, an

23   exhaustive list of the information that

24   would be provided in this category as

25   part of the metadata export?

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1   paragraph 8, right?

2   A.   I don't see it, no.

3   Q.   Okay.   Is that included in your

4   estimate or is it not included in your

5   estimate as a field for the metadata

6   export?

7   A.   I have not personally

8   considered this particular category.   We

9   could consider that and I could see some

10   other items being added to this list and

11   our estimates have, I believe that we

12   would assume that some actual things

13   would be there.   But I haven't committed

14   to anything specific or made a detailed

15   assessment.

16   Q.   You also say in that same

17   paragraph, second-to-last sentence in

18   that paragraph, that "The export would

19   not include any user data which includes

20   reviews of the apps given by other

21   users."

22   Do you see that?

23   A.   I do.

24   Q.   Why is Google excluding data

25   like app reviews?

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1   A.   I would say specifically user

2   data, that's like the key message that we

3   say in the sentence. I believe that

4   users may be surprised to have

5   information like this shared with another

6   party. I am not positive that if we have

7   the authorization to share this

8   information with a third party, either.

9   So the example here is app

10   reviews, but I would consider it more

11   broadly data provided by users concerning

12   a specific app.

13   Q.   And I am specifically asking

14   for now about app reviews. Why not

15   provide app reviews?

16   A.   Reading the language in the

17   proposed injunction and so on, I

18   interpreted it as information provided by

19   the developer. App reviews are not

20   information provided by the developer.

21   This is information provided by Google on

22   our store by users engaged with our

23   store. So I don't see that information

24   as being in scope.

25   Q.   So from your perspective, the

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1   reason to exclude app reviews is because

2   you didn't think it was something

3   expressly called for by the proposed

4   injunction?

5   A.   I would focus on user's

6   expectations and our ability to share

7   this in addition to like what's required.

8   I would be -- personally as a

9   user I would be surprised to see my data

10 being exported to another party. And I

11 am not sure in terms of service or so on

12 even allows that kind of thing.

13   Q.   Google maintains complete

14 control of its terms of service?

15   A.   I am not the expert on terms of

16 service. I would refer that to internal

17 counsel or so on. But I believe we

18 control the terms of service.

19   Q.   So you could change the terms

20 of service to give users notice that

21 their app reviews could be shared to or

22 exported to third-party app stores,

23 right?

24   MR. KRAVIS: Object to form.

25   A.   One, I am not in a position to

Page 111

1   say if we could do that. And, two, I

2   believe they would need to consider if

3   such change would require, for example,

4   for users to agree to these terms.

5   So there is quite a bit of

6   complexity, particularly as we think

7   about different privacy regulations or so

8   on. So I would not speculate on whether

9   it would be required to change or if

10 these changes would be able to be made.

11   Q.   All right. So separate from

12 what you are calling user expectation,

13 and focusing on your review of the

14 injunction, and not thinking that that

15 was called for, what is your

16 understanding of what the goal is of the

17 information that's being exported under

18 your proposed metadata export?

19   MR. KRAVIS: Objection to form.

20   A.   I would go back to the title of

21 this section, which is Catalog Access. A

22 catalog I see as information provided to

23 the developer by Google. I believe that

24 is, I believe the critical distinction

25 here.

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1   User data or information that

2   Google generates about this app or --

3   does not seem to be part of what I

4   consider as a catalog.

5   Q.   Why is the catalog in your mind

6   only information provided by a developer

7   as opposed to information about the

8   product?

9   A.   I will make an analogy to a

10 physical catalog, for example, from a

11 store or for like cosmetics, I don't

12 know, Avon or something along these

13 lines. Like that information is

14 information that the person, the company

15 that builds the -- produces the specific

16 items adds there. I would not see what

17 people think about this specific product

18 there to be an inherent part of the

19 catalog. I see these things as quite

20 separate.

21   Q.   Have you done any online

22 shopping lately?

23   A.   Yes.

24   Q.   Amazon, for example?

25   A.   Yes.

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1   Q.   Isn't one of the prominent

2   pieces of information when you click on

3   an item the number of stars and the

4   number of reviews that it has gotten by

5   purchasers?

6   MR. KRAVIS: Object to form.

7   A.   I think that's a different

8   question, though, if that's part of the

9   catalog or not.

10   Q.   A separate issue. When you

11   online shop and you're looking at a

12   product to potentially buy, do you or do

13   you not see prominently featured star

14   number with a number of reviews that it

15   has gotten?

16   A.   It's included in the page.

17   Q.   It's included in the product

18   page itself, when you click on an item,

19   right?

20   MR. KRAVIS: Object to form.

21   A.   It may be. It's hard to say

22   without looking at a specific example.

23   Q.   But in your mind, looking

24   through a catalog of products, it is not

25   part of what you would expect the

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1   experience to be to see what other

2   purchasers of that product have reviewed

3   or thought of that product?

4   MR. KRAVIS: Object to form.

5   A.   I may see that information on

6   that page. I think that's as far as I

7   can say. I cannot speculate if that's a

8   catalog or not. I think that's a

9   completely different question.

10   Q.   You talked about user

11 expectations a bit. Don't you think user

12 expectations are to see, not just the

13 name of the app and not just the icon of

14 the app, but reviews of the app?

15   MR. KRAVIS: Object to form.

16   A.   I would say the catalog access

17 is part of a solution. I believe that we

18 are obligated to provide some

19 information. How that information is

20 used, what another store does, that's not

21 in control of Google. And, yes, I think

22 they are free to show whatever, whatever

23 information that would be relevant there.

24   My statement relates to the

25 fact that we see and I interpret a

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1   that it obtains from third parties as

2   part of this export to third-party

3   stores?

4   MR. KRAVIS: Object to form.

5   A.   I believe that we need to do

6   more work. This type of detail would be

7   covered in the scoping discussion that we

8   have in the cost estimates. It's not

9   data provided by the developer.

10   Q.   Well, that's not what this

11   says. This says the export would exclude

12   data generated by Google like auto

13   translations, age ratings and install

14   counts; do you see where I am?

15   A.   Yes.

16   Q.   Has a decision been made to

17   exclude that data?

18   A.   My preliminary answer in the

19   declaration would exclude this data given

20   the fact that we may not be allowed to

21   share. However, to have a final answer,

22   I need to do more work.

23   Q.   So none of these are a final

24   answer as to what it would exclude?

25   A.   I believe we were aware of the

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```
 1   principles, we are not sharing age rating

 2   data, we are not sharing data generated

 3   by Google, I believe that gives a general

 4   idea.  We need to look at each one

 5   individually so the response may change.

 6        Q.     And age ratings I think you

 7   said were not generated by Google.  It

 8   was obtained by Google by a third party;

 9   is that what your testimony was?

10        A.     I believe so.  However, for

11   full transparency this is a very complex

12   area.  The age ratings may depend on a

13   lot of different geographies.  So there

14   is a quite a bit of nuance and I would

15   need to consult with other people to have

16   a final answer on this one.

17        Q.     Whose idea was it to exclude

18   data related to age ratings?

19        A.     I discussed this with the

20   group, with the working group that we

21   had, and I heard in the group that that

22   information was, we did not have an

23   authorization to share.  However, that's

24   something that would require more

25   diligence and so on.
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1   Q.   What about install counts,

2   whose idea was it to exclude install

3   counts?

4   A.   I would say the install counts

5   get back to the specific data generated

6   by Google. That information would be

7   excluded for that purpose.

8   Q.   Just listen to my question.

9   Whose idea was it to exclude install

10   counts from the data that would be

11   exported?

12   A.   I discussed this in the working

13   group. It clearly falls into data

14   generated by Google since this is not

15   provided by the developer. This is not

16   provided by the user. And since we are

17   separating different sections, different

18   groups of data, I include it in my

19   declaration.

20   Q.   So was it your decision to

21   create this data generated by Google

22   category and to exclude it?

23   A.   I need to refresh my memory. I

24   don't recall exactly how it happen. It

25   may have been something discussed with

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1 have to Google, to Google's business, to

2 users, et cetera, and I am mentioning

3 this as another example of something that

4 I do not see meeting the definition of an

5 app store and the impact it would have to

6 our business in the broader ecosystem.

7   Q.   Let's look at 24, you talk

8 about the app store and really it's the

9 top of page 6, as you pointed out before

10 the requirement that the app store forbid

11 malware, pirated or unlocked apps and

12 other illegal content. Let's start

13 there. Do you see where I am?

14   A.   I do.

15   Q.   What do you mean by the illegal

16 content, separate from malware, pirated

17 or unlocked apps?

18   A.   This would be something subject

19 to legal review, et cetera. But for

20 example, I am thinking here some contents

21 may be illegal in different countries.

22 For example, gambling. Gambling apps may

23 not be legal in different jurisdictions.

24 So having a process for which this could

25 be assessed, I think that would be

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1   important.

2   I am sure I could think of

3   hundreds of categories of like illegal

4   content. We think it's important for the

5   policies in the store to take that into

6   account and I also think users would

7   agree with that.

8   Q.   And when you say -- I'm going

9   to sneeze at some point, maybe -- when

10   you say that the stores, you expect them

11   to have policies to prevent these things,

12   are you saying that it's enough to have a

13   policy against these things or that they

14   have to have a perfect record of never

15   letting any of these things through?

16   A.   So what I say here is that they

17   have a requirement that they forbid and

18   they have review procedures in place to

19   enforce. The specifics of how we would

20   think about the review procedures and

21   that enforcement, that is something that

22   would be subject to much more detailed

23   analysis. So there is an expectation

24   that there is a process to review these

25   things.

1   I am not saying here that we --

2   that it needs to be perfect; however,

3   there is an expectation that this is

4   something that would be worked on the

5   details of how well this process works,

6   et cetera, like the level of accuracy and

7   so on, these would be things that we

8   should consider as part of the detailed

9   scoping exercise.

10   And I believe we have quite a

11   few people working on that proposal for

12   that reason, since it's quite complex.

13   Q.   And so your intent is to have

14   Google employees reviewing and vetting

15   the third-party app store's policies and

16   their systems in place, and how many

17   employees they have and all of their

18   infrastructure about how they are going

19   to go about reviewing their own catalog

20   as part of allowing them into even

21   getting catalog access?

22   A.   To have access to Google

23   catalogs of apps, we are considering the

24   implication of that to user safety, to

25   our own brand, to our business and so on.

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1   And having a solid process to

2   review apps, to keep enforced, to keep

3   that on an ongoing basis, we see that as

4   a fundamental responsibility and would

5   have a detrimental effect to all these

6   other factors that I mentioned. So, yes,

7   I think it's very important if they want

8   to have access to this data.

9   Q.   And so is that going to be --

10   well, let's look at the chart. Tell me

11   where in the chart the folks that are

12   going to be involved in vetting their

13   policies and procedures, their app review

14   processes and all of the things that we

15   just talked about are involved in making

16   sure that you think that they are

17   sufficiently robust in how they are

18   forbidding malware, pirated or unlocked

19   apps and other illegal content?

20   A.   Yes. So first on page 8 we

21   have the Implementation and Launch, we

22   have one legal counsel, two policy and

23   program manager, one technical program

24   manager and one software engineer for

25   TOS, DDA and other policies. So that's a

1   A.   I would say that there is

2   another feature that implements this

3   capability; however, the implementation

4   of that feature and the implementation of

5   the remedy for catalog access may be

6   different or likely to be different. And

7   so I want to make sure that it's clear

8   it's not a matter of just it's already

9   done.   The catalog access piece is not

10   done.   There is significant work to

11   happen there.

12   Q.   I have no doubt that it's not

13   done. I am saying that there are

14   components, would you agree, components

15   of what it would take to create a user

16   interface for catalog access that at

17   least overlaps, in part, with work that

18   has already been done, either for Alley

19   Oop or for the in-line installation

20   program?

21   A.   I want to be very mindful of

22   the word "overlap." From a user

23   perspective, there are features that

24   behave in such a way.

25   However, it doesn't mean that

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1   we can actually use as a component or

2   code that was built is reusable in a way

3   that's simple. Often, code is not built

4   that way and it may require additional

5   work.

6   So I want to be careful when we

7   talk about overlap, that it doesn't mean

8   that we can reuse the code because it's

9   often not the case.

10   Q.   So separate from being able to

11   copy and paste, which I understand, are

12   you saying that you're starting from

13   scratch or can you at least reuse, in

14   part, some of the code or the work that

15   was done to arrive at a solution for any

16   of those problems that you already solved

17   for Alley Oop or for in-line installation

18   in connection with putting it together

19   for catalog access?

20   A.   One, I don't want to speculate

21   on the specifics since that's an

22   implementation decision that will need to

23   be discussed with the engineering team.

24   Some may be reusable, unclear. Often

25   it's not reusable and there are pieces

1   that need to be done differently. I

2   discussed with our engineering team and

3   the estimate that I received was

4   reflected on the table. It may consider

5   a certain level of reuse of code, but it

6   still requires all the time that we are

7   calling out on the table.

8   Q.   So that's my question. Does

9   your estimates include reusing anything

10   or does it assume starting from scratch

11   on everything, and if you don't know

12   because it was given to you by someone

13   else, you can say that, too?

14   A.   So I talked to these folks.

15   There is some pieces that could be reused

16   and it's still, all this time, they were

17   saying it's a lot of work that needs to

18   be happening.

19   Q.   Who said things can be reused,

20   and what did they say can be reused?

21   A.   That was part of the discussion

22   of the working group. I relied on the

23   advice of different parties of this

24   working group. However, I wanted to

25   remind us here that the working group, it

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1   yes, somebody quite important.

2   Q.   Anyone else more senior that

3   you would expect to decide on this?

4   A.   I believe that Mr. Bright would

5   be the proper person.

6   Q.   You say that in, in 21 you talk

7   about an example where the third-party

8   store may have already obtained the

9   metadata from the export before the

10   developer clicked opt-out, if they

11   intended to. And you said there would be

12   no way for Google to clawback the

13   metadata, right?

14   A.   Yes.

15   Q.   Couldn't Google design a

16   mechanism to claw it back?

17   A.   Specifically, under a solution

18   you're providing a database for another

19   party. They would get this database.

20   They would sync it to their own database

21   and have a copy. And, eventually, on a

22   daily basis on that page proposal or

23   through a mechanism that updates more

24   frequently, this data will be updated so

25   they remain synced.

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1   We don't have any mechanism to

2   control if the other party has actually

3   made a copy of that information and

4   stored it locally. So even though Google

5   in the new versions remove that data,

6   there is no programmatic way for us to

7   know if a copy was made in that case. We

8   can mitigate that partially, that's why

9   we talk about terms of use and terms of

10   service. In that case, we can say you

11   cannot use this data anymore, et cetera.

12   Q.   Right.

13   A.   From a technical perspective we

14   cannot get that data that was already

15   given.

16   Q.   But you could have terms of

17   service that mandates that they not use

18   that old data or that they replace that

19   old data with the new export. You could

20   have all of those in your terms of

21   service. Is that correct?

22   A.   We could have that in terms of

23   service, yes.

24   Q.   You would expect that you

25   would, in fact, have that in your terms

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1   of service, right?

2   A.   I would recommend that, yes.

3   Q.   So in order for this to be an

4   actual problem you would have to assume

5   that the third-party app store is going

6   to intentionally violate Google's terms

7   of service and the app developer's

8   consent?

9   A.   Yes, in this case they would

10   need to violate the terms of service and

11   our enforcement mechanisms, if they

12   didn't catch this, that's the risk, among

13   other risks of an opt-out model.

14   Q.   But specifically about this

15   risk, this risk is mitigated by the terms

16   of service unless you assume that these

17   third-party app stores are going to

18   intentionally violate those terms of

19   service and expressly ignore the

20   developer's decision to opt-out?

21   A.   Yes, this impact would arise if

22   they are ignoring these terms of service.

23   Q.   Did you do any analysis to

24   understand the likelihood of a

25   third-party app store actually doing

Page 235

1   saying that Google had affirmatively

2   blocked competition by other app stores

3   on Android, right?

4   A.   I can only comment on the

5   specific pieces that I have prepared.

6   What I have read, as mentioned, I read

7   the proposed injunction, I read the

8   remedies, et cetera. I don't have enough

9   information to get into the merits of the

10   case and all of the arguments that were

11   made at trial.

12   However, as I am thinking about

13   this response, I am thinking very

14   carefully about the impact of any

15   proposed remedies to the developer's

16   ecosystem and the viability and impact on

17   their business. And in these assessments

18   we have identified that a program that

19   does not ask developers whether they want

20   to affirmatively participate could have

21   negative consequences there.

22   Q.   I am trying to understand that,

23   these are all separate from technical

24   feasibility, would you agree with that?

25   This is a policy decision that you are

Page 236

1   making about concerns for developers,

2   right, this is not a technical issue,

3   agreed?

4   A.   Let me think for a second here.

5   Yes, looking at purely technical, both

6   options are feasible and have different,

7   but like likely in complexity, the time

8   and so on, I believe, should be somewhat

9   similar. However, these developer

10   implications are very important. It's

11   not only about could we, but I believe

12   it's more should we consider this, given

13   the potential impact to developers.

14   Q.   What I am asking is given that

15   you agree it's a policy decision, what I

16   am saying is you made the policy choice

17   to put the risk to developers, as you

18   perceive it, over the risk that

19   competition is never actually opened up

20   because these app stores could never, in

21   fact, get the catalog access that this

22   injunction is designed to give them?

23   A.   I would not say I made a

24   choice. I made a recommendation, given

25   my experience and the experience of

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1   multiple people in the working group,

2   regarding the impact to developer

3   business and how they manage their

4   distribution in different channels. The

5   fact that they have sublicensed IP, and

6   so on.

7   So my strong recommendation on

8   this case, this is one. I believe it's

9   not up to me or anyone in this room to

10   decide what's actually is going to be

11   implemented here.

12   Q.   Well, has it been escalated

13   beyond you or are you the only one who

14   has ever recommended opt-out?

15   A.   As I mentioned, that's my

16   recommendation. I am not the final

17   decision-maker. And the specifics of

18   this proposal, et cetera, would be

19   eventually, if needed, discussed with

20   other people.

21   Q.   Do you think whoever the

22   decision-maker is should factor in the

23   whole reason why we are here, and the

24   conduct that was found to be

25   anticompetitive and the spirit behind

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```
 1    that, violating intentionally your terms
 2    of service?
 3        A.    I believe given how
 4    unprecedented this whole remedy is, I am
 5    not sure how we would go about making
 6    such an analysis.  However, I think it's
 7    important for us to call out the
 8    possibilities and what could arise here.
 9        Q.    But also under this scenario,
10    you're contemplating not only an
11    intentional violation of terms of service
12    and an intentional ignoring of a
13    developer's opt-out but you're also
14    assuming that the third-party store would
15    be intentionally keeping an app listed
16    for download that Google Play would
17    refuse to install and would break the
18    user flow; aren't you?
19        A.    I believe it's important to
20    consider --
21        Q.    I do want an answer to that
22    question, before you tell me what it's
23    important to consider.
24        A.    So I am assuming here that
25    developers, and there are bad actors out
```

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1   there, can ignore terms of service and do

2   something that is not necessarily what

3   they agreed to do. That's what I am

4   assuming here, and I am considering what

5   are the consequences. At the same time I

6   am also thinking about mitigation. So,

7   for example, refusing to fulfill some of

8   these requests is one way to mitigate

9   this risk.

10   Q.   Not only a way to mitigate it.

11   Google would affirmatively refuse to

12   install an app through all of those

13   background checks you talked about,

14   refuse to install an app that the

15   developer had said I don't consent?

16   A.   Yes, we would refuse in this

17   case as proposed.

18   Q.   Okay. So in this hypothetical

19   scenario where this third-party app store

20   said screw it, I don't care that I am not

21   allowed to show this, I am still going to

22   show it, it's setting the user up for

23   failure because Google Play is not going

24   to fulfill that download, right?

25   A.   In that case we would not

Page 253

1   fulfill that download, that's accurate.

2   Q.   Do you think that's a logical

3   thing for an app store to want to do, to

4   present an app that when the user goes to

5   click on it, it's going to get a pop-up

6   that says this is not even available for

7   you. That's not a very good user

8   experience for the customers of that

9   third-party app store, right?

10   A.   I believe that we need to

11 balance here, too, the developer

12 intention and developer choices. So I

13 believe in this case if the developer

14 said I do not want my app distributed to

15 this channel, you should take actions to

16 that. And in this case, it may have an

17 impact on the user journey. However, I

18 think as a platform we are thinking about

19 this as a whole it seems to be in the

20 right balance.

21   Q.   I am asking a different

22 question. I am asking do you really

23 think that it's in the third-party app

24 store's interest such that they would

25 actually do that, that even after consent

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1   A.   Yes, I have worked -- these

2   projects that I mentioned tend to be

3   lighter on the compliance piece, but I

4   have worked on several projects relating

5   to compliance to different regulations.

6   I'm thinking of GMPR. So there have been

7   different processes that I have been

8   involved in some of these more regulatory

9   aspects that take quite a bit of work.

10 Specifically, the charging model. I did

11 talk to people in the working group which

12 worked close to how we charge developers

13 and how we process payments.

14 Specifically, Paul Cooper has a lot of

15 experience in the space. So these

16 estimates also rely on his expertise in

17 this area.

18   Q.   Let's quickly tick through the

19 chart so I can understand where you think

20 your experience was directly relevant as

21 opposed to where you leaned on other

22 members of the working group list.

23   I am going to skip initial

24 scope and design for a minute. Let's

25 talk about implementation and launch.

1   Is that in whole or in part

2   coming from your own experience or were

3   you relying on working group participants

4   to help you there?

5   A.   I would say all of these rely

6   on my experience. I have received a

7   little bit more input on the data sync

8   and consent from colleagues working on

9   the Play Console. However, I have

10 shipped myself features in the Play

11 Console in the past.

12   Q.   What about mechanism for more

13 frequent updates?

14   A.   That one I would say is based

15 on more of my own experience and working

16 with other teams.

17   Q.   Onboarding of stores?

18   A.   Onboarding of stores that would

19 also I say relies to my own personal

20 feelings.

21   Q.   Charging model I think we just

22 talked about, mostly. Mr. Cooper?

23   A.   Yes, Mr. Cooper had a

24 significant role there.

25   Q.   Policy enforcement?

Page 288

1   A.   Policy enforcement, these

2 elements I have relied on Bethel's team

3 on trust and safety and policy review.

4   Q.   Is that also true for the next

5 bucket, ongoing maintenance and policy

6 enforcement support?

7   A.   I would say the software

8 liability engineer and the people working

9 on infrastructure, that relies on my own

10 personal experience. The trust and

11 safety, that relies on the input from the

12 trust and safety team.

13   Q.   Bethel, et al?

14   A.   Yes.

15   Q.   In terms of -- you mentioned

16 that you had done some work within the

17 developer console previously.

18   A.   Yes.

19   Q.   Were any of the projects that

20 you're aware of, in terms of making

21 changes to the developer console or

22 otherwise, did any of those feed into

23 already done, such that we can lower our

24 estimate because we can stand on the

25 shoulders of those developments?

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1   engineers for implementing and launching

2   data synch and developer consent.

3   Q.   Yup.

4   A.   When we passed these tables to

5   Mr. Cramer to prepare the declaration in

6   terms of costs, there is a range. The

7   upper bound of that range reflects the

8   additional 30 percent of costs. That's

9   what we have here.

10   Q.   That's what I want to

11 understand. Separate from what

12 Mr. Cramer did from the dollars and cents

13 side. Let's take the example you gave,

14 six software engineers, six to nine

15 months?

16   A.   Yes. And let me clarify one

17 element. Apologies. The six to nine

18 months accounts for, we add on top of

19 that this 30 percent. So it would be six

20 to nine months and on top of this we add

21 30 percent.

22   Q.   So the six to nine months isn't

23 a lower months that's already been moved

24 up?

25   A.   No, this is, we already added

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1 that and on top of that we add the 30

2 percent, if that makes sense.

3   Q.   Nope, sorry. You said we

4 already added that. So let's just talk

5 about six to nine months for six software

6 engineers. Let me just ask a basic

7 question. Is there any buffer built into

8 the six to nine months at all?

9   A.   The 30 percent buffer is not

10 included in the six to nine months. You

11 would add the 30 percent on top of the

12 six to nine.

13   Q.   Okay. And is there any buffer

14 built into the six software engineers?

15   A.   No.

16   Q.   So nothing in your charts have

17 any buffer built in at all?

18   A.   At the chart, no. We add the

19 buffer on top of the chart.

20   Q.   Christian Cramer's declaration

21 is the only declaration that did any

22 addition of any buffer?

23   A.   For the cost, yes. We did

24 contract for the 30 percent increase in

25 terms of the time for here when we say,

1   if you look at paragraph 36, I say it

2   would take 12 to 16 months.

3   This would account for three

4   months of initial scoping plus six to

5   nine. These things can run in parallel,

6   so that would be 9 to 12. So the 12

7   percent piece is that 9 to 12. And the

8   16 is 30 percent on top of that.

9   Q.   Okay. But in terms of your

10 understanding, did that 12 to 16 months,

11 get used by Mr. Cramer to quantify in any

12 way?

13   A.   I believe so, yes. We passed

14 the same buffers and they have used the

15 buffers to calculate the cost, and so on.

16   MS. MOSKOWITZ: So let's look at

17   it. Let's look at Cramer. I just

18   want to make sure that I am

19   understanding.

20   I am going to hand you what I am

21   going to mark as Exhibit 9009.

22   (Exhibit 9009, Mr. Cramer's

23   declaration, was so marked for

24   identification, as of this date.)

25   Q.   Do you recognize this as

Page 301

1   right?

2   A.   Yes, they should match.

3   Q.   And so what I am looking at, if

4   you look at the sort of bottom he gives

5   them aggregated numbers but he does not

6   do any math unless you can tell me where

7   on the 12 to 16-month overall timeline,

8   that's what I just want to understand

9   where I would look for that?

10   A.   I believe it would be, if you

11   look at page 4, you have the aggregate

12   plus 20, aggregate plus 30 on the bottom.

13   Q.   Yes.

14   A.   I believe that's where the

15   buffer is accounted for.

16   Q.   Okay. That's fine. So that's

17   a buffer on the total dollars?

18   A.   Yes.

19   Q.   Not so much on the 12 to 16

20   month --

21   A.   Yes. The 12 to 16 month is

22   accounted on my declaration on top of the

23   numbers there. If that makes sense.

24   Q.   Okay. So in terms of any

25   multiplication by any 20 or 30 percent,

Page 302

1   the only place it happens that translates

2   into dollars is Mr. Cramer's declaration?

3   A.   I believe so, yes.

4   Q.   I think I understand. Let's

5   look then at a couple more specific --

6   let me withdraw that and just go back to

7   that buffer for a second.

8   Have you been involved in any

9   projects that did not include a 20 to 30

10 percent buffer?

11   A.   Sometimes, yes, there are

12 projects that did not account. The 20 to

13 30 percent is -- comes based on my

14 personal experience of projects that were

15 budgeted too conservatively and ended up

16 encountering this type of delay. So for

17 that reason I am accounting explicitly

18 for this type of buffer.

19   Q.   Was the buffer range or concept

20 discussed in the working group or is that

21 something that you just drew upon your

22 own experience to include?

23   A.   That was based on my

24 experience. I did discuss with Mr. Paul

25 Cooper, who as a program manager, has

Page 303

1   done many projects as such and he agreed

2   with the same range.

3   Q.   And I think you somewhere in

4   here decided that rather than 20 to 30,

5   you think 30 is appropriate? Let's look

6   at paragraph 35, I found it, the last

7   sentence.

8   A.   I believe that I assume 30

9   percent on top, yes, for simplicity here.

10   Q.   But in terms of your

11   application, you didn't apply, other than

12   the file 12 to 16 month?

13   A.   Yes, I applied this on the

14   timelines. Not on the estimates of time

15   on the table and for individual items or

16   the individual number of engineers or

17   other people in each row.

18   Q.   Let's go back to the chart,

19   starting on page 8, the initial scoping

20   and design. We've talked about them a

21   few times. It sounds like they are,

22   basically, going to be touching

23   everything a little bit?

24   A.   Yes. Yes, they would be

25   touching a lot of different elements

1   example, any relevant fees or any

2   relevant policies. This needs to be a

3   clear example of something that it does

4   not look like an app store, since there

5   is only a single title that is

6   downloading. And I think that's one

7   example that without catalog access would

8   need different terms to prevent.

9   Q.   But that launcher would not

10   also pass the eligibility criteria for

11   catalog access?

12   A.   I am saying let's say that,

13   let's say for the sake of the argument

14   that we are not getting catalog access,

15   you are not getting catalog access but

16   would still need access for this case to

17   call out launcher package, which does not

18   seem like a store from a user

19   perspective. And they seem to be

20   effectively trying to circumvent policies

21   from the Play Store.

22   Q.   I am not saying absent catalog

23   access, you would need no eligibility

24   criteria or you think it's appropriate.

25   I am trying to understand

Page 350

1   sitting here right now is there any

2   eligibility criteria that you would say,

3   okay, I don't need this for catalog

4   access but I do need this for third-party

5   store distribution through Google Play;

6   do you understand what I am asking?

7   A.   I do. I think the amount of

8   work that you would need to look at these

9   policies. As I have mentioned we have

10   done initial scoping to understand. It's

11   virtually impossible for me to say right

12   now that all of these criterias and say

13   conclusively we can have a single one. I

14   would not be surprised to have different

15   criterias and having a different criteria

16   and have the need to have two separate

17   elements. And I would prefer at this

18   stage to keep these two things separate.

19   Q.   Would you be, would you view it

20   as appropriate to put any content

21   restrictions, not illegality, but like

22   content restrictions where just Google

23   doesn't think it's appropriate to have

24   certain types of things, even though they

25   are not illegal, in the Google Play

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1   Store, would you apply such a policy for

2   distributing third-party stores through

3   the Google Play Store?

4   MR. KRAVIS: Object to form.

5   A.   I would defer that to our

6   policy teams, or so on. I believe the

7   relevant reasons to have policies against

8   objectionable content and that could have

9   implications in our business. I would

10   defer that to the policy experts as it's

11   not for me to speculate on these matters.

12   Q.   So that hasn't been decided

13   yet?

14   A.   No.

15   Q.   In terms of the launcher issue

16   that you mention in paragraph 41 and

17   mentioned just a few moments ago, is the

18   real concern there evasion of Google's 30

19   percent fee?

20   A.   That's one of the many terms of

21   service. Developer distribution

22   agreement terms. But there are many

23   other terms. I could see the same

24   concern applying, for example, for some

25   with objectionable content. Let's say

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1   that you have a launcher for a

2   pornographic app. So I could see the

3   same concern applying here, you are using

4   a launcher in a way to avoid some term

5   that is available there.

6   Q.   And what's your issue with a

7   launcher that in turn launches a

8   pornographic app, is your concern the

9   Play brand or something else?

10   A.   On the, one, starting from the

11   point that we have reasons to have

12   restrictions against different types of

13   content. So let's start from there.

14   Pornographic content being one of these.

15   Or highly violent content being another

16   one. So you can think of many categories

17   that fall into that group. From a user

18   perspective and how do they download,

19   that immediately downloads another app

20   and it only downloads one app in access

21   launcher. It seems like it's effectively

22   very similar.

23   So I can see a direct impact to

24   our brand, so advertisers, concerns about

25   people using their store and seeing this